



POLICE DEPARTMENT

March 23, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Kathleen Cornetta
Tax Registry No. 899512
Patrol Borough Brooklyn North
Disciplinary Case Nos. 82733/07 & 85356/09

The above-named member of the Department appeared before the Court on December 10, 2009, and January 8, 2010, charged with the following:

Disciplinary Case No. 82733/07

1. Said Police Officer Kathleen Cornetta, assigned to Patrol Borough Brooklyn North, on or about March 4, 2007, in or about a location known to the Department in Suffolk County, New York, did engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, in that said Police Officer, having been left alone to watch and care for three young children, wrongfully did leave them home without ensuring that they were supervised. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Kathleen Cornetta, assigned as indicated in Specification #1, at or about the time, date, and location indicated in Specification #1, did wrongfully consume an intoxicant to the extent that said Police Officer was unfit for duty. (*As amended*)

P.G. #203-04, Page 1, Paragraph 1 - FITNESS FOR DUTY
GENERAL REGULATIONS

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Disciplinary Case No. 85356/09

1. Said Police Officer Kathleen Cornetta, assigned to Patrol Borough Brooklyn North, on or about and between September 2008 and April 15, 2009, knowingly did associate with a person reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities, in that said Police Officer maintained a social or romantic relationship with an individual who had been arrested for and convicted of one or more crimes in New York.

P.G. 203-10, Page 1, Paragraph 2(c) - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the charges in Case No. 82733/07. She pleaded Guilty to the charges in Case No. 85356/09 and testified in mitigation of the penalty. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 82733/07, the Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2. The Respondent, having pleaded Guilty to Specification No. 1 of Case No. 85356/09, is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called [REDACTED] Police Officer Andrew Derose, Captain Theofanis Papadopoulos, and Lieutenant George Howley as witnesses.

Suffolk County Police Officer Andrew Derosé

Derosé had been a police officer in [REDACTED] for approximately four years. He previously had been a trooper with the New York State Police and a military police officer in the United States Army, for a total of about eight years.

Derosé was performing patrol duties on March 4, 2007. Around 9:00 p.m., Derosé responded to a residence on [REDACTED] where the Respondent had called 911 and said "someone had taken her children." Officer Tarquinio also responded.

Derosé described the street as having two-way traffic and vehicle parking on either side. The caller's home was a corner house.

Derosé admitted that by the time he and Tarquinio arrived, or at least "right away" after they arrived, they became aware that "the children were safe with" the Respondent's husband, Detective Cornetta (identified in later testimony as retired New York City Police Department [NYPD] Detective Joseph Cornetta). Derosé's computer read "cousin." About ten minutes before the Respondent's 911 call, "another officer went to that location." Joseph Cornetta had also called 911.

Derosé testified that when he arrived, he observed the Respondent, "visibly upset," sitting on the front steps. The Respondent may have been crying, and there was a strong odor of alcohol on her breath. She was angry and slurring her speech. He believed she was impaired by alcohol.

Derosé admitted that he did not tell the Respondent immediately that her children were safe because he "wanted to hear her side of the story see what was going on." The Respondent told Derosé that her "cousin in law", Elizabeth Schule, had asked her to mind Schule's child and the Respondent's two children while Schule went to the store. The Respondent went to the home

of a neighbor, Sinkusky (later identified as Gary Sinkusky), "and she could see the children playing on the lawn and then at some point she came home and the kids were not there."

Derose alleged that the Respondent was belligerent and uncooperative. She was "very defensive and thought that I shouldn't be asking her questions." For example, Derose asked her if she had been drinking, and why she did not notice the children were missing if she could see them from the neighbor's house. Derose contended that she refused to answer these questions. The Respondent said that Derose was a rookie, that he didn't know what he was doing, and that he "enjoyed arresting her because [he] made more money than her." She also wanted to contact her supervisor and a Patrolmen's Benevolent Association (PBA) representative. Derose testified that as a courtesy, he spoke to the Respondent's immediate supervisor.

Derose testified that he arrested the Respondent and transported her to the [REDACTED] Precinct. The Respondent was placed in the juvenile interview room by herself and "chained" or handcuffed to the wall. Derose alleged in the complaint that the Respondent left the children alone for approximately two hours.

Derose stated that the NYPD was alerted to the Respondent's arrest. NYPD personnel (besides the Respondent's PBA representative) arrived at the precinct about an hour or two after Derose got there with the Respondent, although Derose admitted that he "honestly ha[d] no idea what time that would have been." Derose did not recall speaking to those members, but it was possible that he did: Derose did not "remember an exact conversation verbatim."

Derose testified that Joseph Cornetta and Schule arrived and gave statements to the Suffolk police. The Respondent was arrested on the basis of Schule's statement.

On cross-examination, Derose stated that the Respondent might have told him that she called her husband and said that she was calling 911 if he did not return the children.

Derose agreed that “[a]t some point it was intimated” to the Respondent that there was alleged wrongdoing on her part.

Derose testified that the Respondent’s eyes were red and watery. She was slightly disheveled and “somewhat hysterical.” She was not given a breathalyzer or other sobriety test. Derose agreed that if “it was relevant . . . at the time to make an accurate conclusion” whether she was impaired or intoxicated, he “would have implemented other tools . . . to make that determination.”

Derose based the time frame of leaving the children alone for two hours on the statements of Joseph Cornetta and Schule. In her statement, Schule said she left the house around 4:30 p.m. and the Respondent was present. Schule returned around 5:40 p.m. and the Respondent was gone. The Respondent called Schule at approximately 6:30 p.m. “so that is the time frame that Miss Cornetta was not home.” Schule then called Joseph Cornetta, her cousin. Also, Joseph Cornetta gave a time of 6:30 to 8:15 p.m., stating that when he got to the home at 8:15 p.m., the Respondent was not home. Derose agreed that the earliest Joseph Cornetta could have called 911 was approximately 8:40 p.m. because Derose arrived at the location around 9:00 p.m. Derose conceded that based on his investigation, the children could not have been left alone for two hours.

Derose testified that Joseph Cornetta got his information from Schule. Derose agreed that Joseph Cornetta came to the house, and he and Schule took the children.

Derose did not see any evidence that the Respondent was given anything to drink while she was at the precinct.

Derosé stated that the NYPD officers “might have asked what happened or I might have gave them the rundown or my sergeant might have done that.” He believed that the officers entered the interview room to speak to the Respondent.

On re-direct examination, Derosé testified that he learned the Respondent had been drinking with Sinkusky, who later appeared at the Respondent’s home with a strong breath odor of alcohol.

Captain Theofanis Papadopoulos

Beginning on March 4, 2007, Papadopoulos was working a 2300x0700 tour as the duty captain for Patrol Borough Queens North. Shortly after 11:00 p.m., Papadopoulos was informed that an off-duty Department member had been arrested in [REDACTED]. He went with Lieutenant Howley and Sergeant Pinkney from Queens North Investigations. Papadopoulos believed the trio arrived in [REDACTED] around 1:00 a.m., where he spoke to a [REDACTED] police supervisor and got the basic facts. The off-duty member had called 911 from her residence “inquiring about the whereabouts of her children.” The [REDACTED] County police “determined that she had left the children home alone” and arrested her.

Papadopoulos testified that he met the Respondent in a small room or cell. He did not recall if he met with her by himself. He asked the Respondent brief basic pedigree questions. He believed she was sitting and “chained” to something.

At some point, while taking pedigree information from the Respondent, Papadopoulos smelled alcohol. Papadopoulos’ fitness for duty report was admitted as Department’s Exhibit [DX] 2. The following boxes were checked. There was a “strong” odor of alcohol on the Respondent’s breath. Her face was “flushed,” meaning red, and her clothing “disheveled.” She was “crying” and her eyes “bloodshot.” Her speech was “normal.” In the “attitude” section,

Papadopoulos checked off "excited" but also handwritten "irrational." Papadopoulos found the Respondent unfit for duty.

On cross-examination, Papadopoulos testified that fitness for duty depended on the totality of the circumstances, including physical appearance, demeanor, and alcohol on the breath. Unfitness could also be the result of physical injury or emotional distress. He had found individuals unfit for duty a few times in the past. No lieutenant or sergeant had disagreed with him on those occasions.

Papadopoulos agreed that the [REDACTED] personnel stated that the Respondent appeared "intoxicated."

Papadopoulos did not ascertain how much the Respondent had drunk. He assented that it was possible that someone could have a breath odor of alcohol after "half a drink." He agreed that the Respondent's condition "could be consistent" with things other than alcohol use, like a "personal tragedy" or "being locked in a police precinct for several hours."

Papadopoulos estimated that he spent five minutes in the interview room with the Respondent, but conceded that it might have been only a "couple minutes."

Papadopoulos filled out the fitness for duty report sometime after the observation. He did not know where Howley was at that time and did not recall conferring with him about what Howley saw. Papadopoulos believed he did his observation of the Respondent first, and then Howley went. Papadopoulos filled out his own report in its entirety, and did not believe he consulted Howley's report first. Papadopoulos did not believe Howley based his report on Papadopoulos' account, but because Howley prepared the suspension "49" for the Respondent, Howley would have had a copy of Papadopoulos' report. Papadopoulos returned from Suffolk County with Howley.

Lieutenant George Howley

Howley was assigned to Queens North Investigations. On the night of March 4, 2007, and leading into the next day, Howley became aware that a Department member had been arrested. Howley went with Papadopoulos to the [REDACTED] Precinct and met with Derose, the arresting officer. Howley also spoke to Sergeant Fischer from [REDACTED]. The [REDACTED] officers told Howley that the NYPD member "called 911 and . . . was upset and was looking for her children and when they got to the scene she was intoxicated, belligerent . . . and their investigation le[d] them to believe she left the kids unattended for I believe about two hours and she was arrested." The [REDACTED] officers indicated that the Respondent was drinking when they encountered her.

Howley testified that he went with Papadopoulos and Pinkney to a small interview-type room where the Respondent was being held. As a courtesy, she was not handcuffed. Howley spoke to the Respondent and obtained her pedigree information.

Howley testified that the Respondent was crying, had bloodshot eyes, and emitted a strong smell of alcohol. She was "talkative and upset" and appeared intoxicated. Howley asked the Respondent to breathe into his face, and she "[s]melled like somebody that was drinking a large quantity of" alcohol. Howley testified that it was this strong smell that led him to recommend that the Respondent be found unfit for duty.

Howley believed the Respondent was sitting. He did not recall speaking to her.

Howley filled out a fitness for duty report within half an hour of his observation, before he left the [REDACTED] Precinct. Howley, Papadopoulos and Pinkney spoke with each other about their observations of the Respondent and "all concluded similar outcome."

Howley testified that he had evaluated members of the service for fitness for duty in the past. When asked if he had ever disagreed with another supervisor about a member's fitness for duty, Howley said, "I have seen it in the past."

Howley's fitness for duty report was admitted as Court Exhibit [CX] 1. The following boxes were checked. There was a "strong" odor of alcohol on the Respondent's breath. Her face was "flushed" and her clothing "disheveled." Howley handwrote that the Respondent was wearing a brown sweater, brown pants, and a white T-shirt. The Respondent was "crying" and her eyes "glassy/watery." Her speech was "normal" and her "attitude" was "cooperative" and "talkative." Howley's overall conclusion was that the Respondent was unfit for duty.

On cross-examination, when asked whether the Respondent said during pedigree questioning, "PO Cornetta, tax number, shield number, assigned to whatever command it was," Howley stated that he, Papadopoulos and Pinkney probably had an identification card for her so they already knew her pedigree. Howley did not recall what the Respondent said, but she was talking a lot.

Howley agreed that the supervisors consulted with one another while filling out the fitness for duty reports.

Howley testified that the Respondent's eyes looked very red. She was not belligerent to Howley, as opposed to the report that she had been belligerent to Suffolk officers. The odor of alcohol was in the room as well. Based on her breath odor, Howley would have arrested her for driving under the influence of alcohol, meaning over 0.08 blood alcohol content, had she been driving. Field sobriety and breathalyzer tests would have been conducted in that instance.

Howley asserted that when "someone has been drinking all night and when someone had one drink it seems like I could tell the difference." When asked, "How do you know you have

that talent," Howley answered, "Because I am half Irish I am sorry but." He added that there were several alcoholics in his family. He admitted that he did not know when the Respondent had last been drinking, but believed it was within three or four hours. Howley stated that it was not just the alcohol on her breath, but her talkativeness and "the way she appeared." He agreed that her disheveled clothing could have been "explained" by being in police custody for three or four hours.

Upon examination by the Court, Howley testified that by disheveled clothing, he meant that it appeared the Respondent had been sleeping in them. By talkative, he meant that her statements were not responsive and were more akin to "venting."

Statements of Joseph Cornetta

Two statements from the Respondent's husband, retired NYPD Detective Joseph Cornetta, were admitted as exhibits.

The original statement to the [REDACTED] police was admitted as DX 1. Derosé indicated that he wrote it and Joseph Cornetta signed it. Joseph Cornetta stated that his cousin, Elizabeth Schule, called him on his cell phone at approximately 6:30 p.m. on March 4, 2007, and stated that his daughters Samantha and Danielle Cornetta, and Schule's daughter Colette, were home alone at the [REDACTED]. He tried to call the Respondent on her cell phone but she did not answer. He then drove to [REDACTED], arriving at approximately 8:15 p.m. The Respondent still was not there. Joseph Cornetta and Schule put all the children into Schule's car and drove to Joseph Cornetta's residence, also in [REDACTED].

The audiotape recording of the official Department interview of Joseph Cornetta was introduced as Respondent's Exhibit [RX] A and the transcript as A1. The interview was

conducted by Sergeant Victor Steele on November 5, 2007. Joseph Cornetta was interviewed as a witness.

Joseph Cornetta stated that he and the Respondent had been married for seven years but were separated at the time of the incident. He "officially" moved out on Christmas night, December 25, 2006. Schule was his first cousin and had been living with the Cornettas for almost a year with her daughter, Colette.

On March 4, 2007, Joseph Cornetta received a phone call from Schule. She said she had returned home and found not only Colette, but Joseph Cornetta's two children, [REDACTED]

[REDACTED]

unattended. Schule said she had not been in contact with the Respondent, did not know where she was, and was worried. Joseph Cornetta told her to get the children dressed and he would be right over. When Joseph Cornetta arrived, Schule had the children in her car, and they all went to Joseph Cornetta's residence. He then contacted the [REDACTED] Police to tell them that his children were with him, so as not to cause alarm to anyone, including the Respondent. The police told him they had received a call from the Respondent stating that she returned to find the children missing. There "was an investigation" by the [REDACTED] police "and they took action."

Joseph Cornetta stated that he "subsequently discovered the truth." Schule and the Respondent had spoken and "had a disagreement." Schule knew that the Respondent was "right across" the street at a neighbor's home, and the Respondent did not return because of that disagreement. Joseph Cornetta added that the children were not unattended because the Cornettas' front door was in direct view of where the Respondent was, in Sinkusky's kitchen. Also, the Respondent and the oldest girl, Samantha, had spoken.

Joseph Cornetta stated that March 4, 2007, was the last time Schule lived at the [REDACTED] house. She was not "paying rent or anything," which was the source of tension between her and the Respondent. The Cornettas were paying Schule's phone bill and school lunch for Colette. Joseph Cornetta believed one of the reasons Schule "left [out] a big chunk of that story about the events" of March 4, 2007, was that "she was looking for an out." Joseph Cornetta did not believe Schule wanted to get a job. "She was basically cornered" and took it out on the Respondent, knowing that the Cornettas were having problems.

Joseph Cornetta stated that the Respondent was not an alcoholic, nor did she have a drinking problem. The Respondent "is, without sounding sexist, Cathy's a girl. [I mean,] Cathy is just a mom. She's, she's a big softy inside and she's emotional. I think a lot of people confuse her emotions with maybe not being able to handle [liquor]."

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

The Respondent had been a member of the Department for almost 19 years. She was assigned to Patrol Borough Brooklyn North and worked in the command's administrative operations. Her job responsibilities had not diminished since she was placed on modified duty, and in fact had increased once she was assigned to be the domestic violence officer for the borough.

The Respondent testified that her divorce from Joseph Cornetta was pending. They got married in March 1999. [REDACTED]. They had

[REDACTED]

[REDACTED]

In April 2006, Joseph Cornetta's cousin Elizabeth Schule and her daughter Colette came to live with the family [REDACTED]. Schule had left her husband and had nowhere to go, so Joseph Cornetta took the two in.

The Respondent testified that in lieu of rent, Schule was to help out with the children and around the house. Both the Respondent and Joseph Cornetta worked for the NYPD. The Respondent's tours were 6x2, Monday through Friday. Joseph Cornetta's schedule was rotating, with four days on duty and two days off. The Respondent testified that when the Cornettas were not home, Schule was responsible for taking care of the children and getting them ready for school in the morning. At the time, Danielle was in day care or pre-school and Schule was responsible for taking her and picking her up. [REDACTED]

[REDACTED]

The Cornettas' marriage began to deteriorate in late 2005 to early 2006. In perhaps June 2006, the Respondent found out that Joseph Cornetta was having an affair with a neighbor across the street, Nancy, one of the Respondent's best friends. Nancy's husband was Gary Sinkusky. Joseph Cornetta and Nancy moved in together at another location [REDACTED]. Joseph Cornetta came back to live at the Cornettas' residence around mid- to late November 2006, but left again that Christmas Day.

Once Joseph Cornetta left the Respondent, the arrangement with Schule became "[a]wful" because Schule only took the kids to school "and that would be about it." The Respondent's parents ([REDACTED]) had to pick up Danielle from preschool. Schule never cleaned the house. Once the Respondent got home, around 3:30 p.m., Schule

would "take off from that point" and leave Colette with the Respondent. Joseph Cornetta would visit the children when he was able, and the Respondent either would remain home or leave to do errands. This occurred once or twice a week, but sometimes less.

The Respondent testified that she paid for food for Schule and Colette, as well as Schule's cell phone bill. The Respondent complained to Joseph Cornetta and his family that she "wasn't getting the help that [she] needed," and was having financial difficulties with Joseph Cornetta not being at home. In mid-February 2007, the Respondent told Schule that she needed to help out more, start paying rent, and "get a job or something because [the Respondent] couldn't do it any more." Schule was not happy, and stormed off from the house. The next two weeks were a time of animosity between the two women.

The Respondent testified that March 4, 2007, was a Sunday, a day off for her. The Respondent was seeing a therapist and went to a counseling session, leaving Joseph Cornetta and Schule at home with all three girls. When the Respondent returned home, around 1:30-2:00 p.m., Schule was not home. Joseph Cornetta told the Respondent that she had gone to lunch with her friends. Joseph Cornetta then left the [REDACTED] house to return to his residence.

Schule returned home approximately half an hour later. "[F]rom what [the Respondent] was told," Schule had gotten a job. Schule said she wanted to help the Respondent with "a schedule and stuff . . . so we can have a consolidated schedule of her work." Schule left to buy a calendar, and the Respondent got the children ready for bed.

The Respondent testified that the girls were watching television and she was speaking to Sinkusky, the neighbor, on the phone. The Respondent and Sinkusky spoke on occasion "about everything that was going on," but had no romantic involvement. Sinkusky mentioned that his girlfriend, Diane, was coming over. The Respondent went across the street at approximately

5:15-5:20 p.m. to give Sinkusky a bottle of wine from Joseph Cornetta's basement winemaking set.

The Respondent testified that the distance between her house and Sinkusky's was about ten feet more than the length of the trial room. There were no sidewalks but there were front lawns. [REDACTED] was a through street but "dead . . . a very quiet road." If cars were parked on either side, two moving vehicles could pass each other but it would be tight. The Respondent asserted that she was friendly with all her neighbors.

When the Respondent went to Sinkusky's house, the girls were watching TV in the living room. She told them she was "running across the street" and would be right back. The Respondent stated that she could see her house from "where [she] was with Gary." She was standing just inside Gary's front door. The main front door was open but the glass-paned storm door was closed. She also spoke to the girls on the telephone.

The Respondent testified that after about five minutes, one daughter came outside because the girls were arguing about the movie they wanted to watch, and the Respondent spoke to her in person. The girl came out a second time because they wanted popcorn. The Respondent saw her daughter come outside. In total, the Respondent spoke to her about five to ten minutes.

The Respondent stated that after approximately twenty minutes from her first arrival at Sinkusky's house, she saw Schule come back home. Schule "had run in the house with a bag in her hand," so the Respondent called her. She did not pick up. When the Respondent called again, Schule answered but the two women got into a "heated argument." The Respondent was upset because Schule was away for so long an hour-and-a-half to two hours – when she merely was supposed to be "running around the corner." Schule was screaming that the Respondent left

the kids home alone. The Respondent replied that she was directly across the street, that she was watching the children, that this was how she knew Schule had come back and why she called. The Respondent told Schule she was “tired of the BS that this is ridiculous,” and she needed Schule’s rent money.

After the argument with Schule, the Respondent stayed at Sinkusky’s home for a while. She was “extremely upset because things . . . were getting worse and worse each day.”

The Respondent testified that Sinkusky offered her some wine when he saw that she was upset. The Respondent said, “It was one no, I had two at Gary’s.” It was a red wine but the glass she used was a skinnier white wine glass. She then went to the home of Debbie, whose home was on a different street in back of the Respondent’s house. Schule’s car was still at the Columbus Avenue home.

Debbie was one of the Respondent’s best friends, and the Respondent wanted “to try to have her guide me in some way in dealing with the situation.” The Respondent stated that she cried at Debbie’s house but drank only tea. She spent perhaps an hour there.

The Respondent believed Schule was watching the children because that was their arrangement when the Respondent was not home. During these times when the Respondent was out, Schule had never gone from the house and left the children unsupervised. “If she were to go anywhere she would take them with her.”

The Respondent testified that she returned home close to 9:00 p.m. when Sinkusky came to Debbie’s house and announced that Schule’s car was gone. The Respondent “panicked and ran home.” The TV was still on, but no one was home. The Respondent called Joseph Cornetta and Schule but neither answered, so she left messages saying she would call the police if her daughters were not returned or they did not call back. Eventually, the Respondent did call the

police, telling them that she was a member of service, that her children were gone, that she was “going through a bitter time” and believed her husband had the children. She gave the [REDACTED] police Joseph Cornetta’s address.

Around 9:15 p.m., the [REDACTED] police responded to the [REDACTED] home. Debbie and her husband and daughter, as well as the Respondent’s parents and brother, also came over. The Respondent had also spoken to two of her NYPD supervisors. The Respondent still was drinking only tea. She was “extremely upset. . . . crying . . . trembling . . . hysterical.” She thought she “was probably going to have a nervous breakdown at that point. It was just like another thing added on. . . . My husband left and now he took my kids, which he had threatened to do previously.”

The Respondent testified that the [REDACTED] officers conferred, then told her she was being arrested for child endangerment. She “just felt [her] entire world had crashed in at that point,” The Respondent did not feel, however, that her now-worsened emotional state had anything to do with alcohol. She did not, at any time that evening, feel impaired by alcohol.

The Respondent stated that she was transported to the [REDACTED] Precinct in the front seat of the [REDACTED] police vehicle. She was only handcuffed once she was taken before the desk officer. She recalled answering some of the pedigree questions before the desk officer even asked because she was able to read them upside down. The Respondent was taken to a small room, by herself, and handcuffed to the wall.

The Respondent said that Papadopoulos, Howley, and a female NYPD sergeant arrived around 1:00-2:00 a.m. They stayed in the room “just a couple minutes” and asked basic pedigree questions. She did not recall Howley coming close to her face and asking her to breathe, but the supervisors might have gotten as close as the reporter was to the witness seat in the trial room.

“Physically [the Respondent] probably looked like hell” at the time of the supervisors’ observations. She had been crying all night. The Respondent, noting that she was handcuffed to the wall, said her clothes “were probably I am trying to get comfortable which you can’t do.”

The day after the Respondent was arraigned, she contacted her matrimonial attorney “and told her to file the papers.” In criminal court, in approximately November 2007, the Respondent accepted a six-month adjournment of contemplation of dismissal, and the case subsequently was dismissed. Schule moved out and the Respondent never saw her again.

The Respondent testified that after her arrest, she began a relationship with Richard Szumski. They were introduced by a mutual friend. Szumski’s occupation was erecting advertising billboards, and he had close relatives that were police officers. At the time they began their relationship, the Respondent did not know that he had a criminal record, and he did not volunteer it during the relationship.

The Respondent learned that Szumski had been in the Air Force, but later found out that he got in trouble after hitting on a superior officer.

The Respondent testified that Szumski spent time with her and her daughters, and would occasionally stay overnight, but did not move into the [REDACTED] home.

After about six months of dating, in September 2008, the Respondent found out that Szumski had a “criminal background.” Joseph Cornetta called and texted the Respondent. Joseph Cornetta was upset “on how I let this man into my house and be around his children” and that he had notified “proper authorities,” like child protective services and the NYPD.

At the time, the Respondent testified, her relationship with Joseph Cornetta was at “rock bottom.” She first believed Joseph Cornetta “was making stuff up and just saying stuff like he always did,” but then she confronted Szumski. He admitted that he had been arrested and was on

probation. Szumski gave her details of the incident. The week the Respondent found out, she went with Szumski to a meeting with his probation officer “to find out what exactly I was in to.”

The Respondent discovered that Szumski was accurate. The conviction was for aggravated harassment and possession of a forged instrument. Szumski called a woman, who had been arrested for driving while intoxicated, and impersonated a police officer. Szumski told the individual he could help with the DWI in exchange for a sexual act. The crime was not carried out because Szumski was arrested when he arrived to meet the individual.

The Respondent admitted that she did not break off the relationship with Szumski. She contended that she was in a “state of denial” because she did not think he was capable of it when he had been so supportive of her. At her April 15, 2009, official Department interview, the Respondent was ordered to break off the relationship by, she believed, Captain Romanzi. The Respondent testified that she broke it off and had not been in contact with Szumski since then.

On cross-examination, the Respondent agreed that Schule was a “user” of people “[b]ig time.” She testified that Schule never helped with household finances. Schule never cleaned anything, as was supposed to be their agreement. She did buy food “once in a blue moon.”

The Respondent nevertheless described Schule as reliable and agreed with the Advocate that when it came to the children, when Schule “said she was going to be somewhere,” she was there. When the Respondent came home from work, however, Schule would leave. The Respondent was aware “she had boyfriends and stuff. I don’t know where she would go.” The Respondent trusted Schule because she was a member of Joseph Cornetta’s family, and the Respondent “knew she would never harm my children or anything,” but beyond that the Respondent could not trust or rely upon her. On occasion, Schule said she was going to do something or be somewhere, and then did not follow through.

After Christmas 2006, the Respondent testified, "there was definitely animosity going on that we wouldn't even speak to each other." The Respondent admitted that she believed Schule "wouldn't or wasn't taking as good care" of the children as she should. The Respondent's parents had to begin picking up Danielle from pre-school, and Samantha said that Schule was mean to her.

The Respondent stated that she spent approximately 20 minutes at Sinkusky's home, including the time she spoke on the lawn to her daughters. After the phone argument with Schule, the Respondent remained at Sinkusky's house for about another hour to an hour and a half. The Respondent stated that she had eaten just before visiting Sinkusky because she had dinner with the three girls.

The Respondent admitted that while at Debbie's house, she did not get in contact with Schule or the children.

The Respondent conceded that Derosé was professional in the beginning. He became "pretty nasty," however, when the Respondent asked if an acquaintance of hers, who she knew worked in the [REDACTED] Precinct, was working that night. Derosé asked "why . . . am I looking for help and how dare I actually question . . . him doing his job." The Respondent asserted that was not her meaning.

The Respondent testified that Joseph Cornetta also brought up the Szumski allegations in Family Court papers at an appearance in October 2008. In the papers, Joseph Cornetta asserted that Szumski victimized more than one woman.

The Respondent admitted that she knew Szumski's record involved a felony conviction because of the probation sentence.

The Respondent asserted that at the time, Szumski's impersonation of a police officer did not concern her as a police officer "because that wasn't the man that I had come to know at that point . . . I guess I was in denial."

On re-direct examination, the Respondent testified that after Schule left, she learned that Schule had been able to support herself through other means. Schule's brother gave her money, and she was receiving child support and maintenance.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82733/07

Although the charges were presented as a case of parental neglect, the events took place in a larger context of familial acrimony among several individuals. The Respondent was in the midst of a divorce from her husband, Joseph Cornetta, who had an affair with a neighbor. At the time, Joseph Cornetta's cousin, Elizabeth Schule, was living with the Cornettas after Joseph Cornetta invited her in. Related to the Respondent only through marriage, Schule continued to live there after Joseph Cornetta moved out. The Respondent felt that Schule was not contributing to the household, and the women were not getting along well.

For the sake of clarity, the charges in this case will be taken out of order.

Specification No. 2

The Respondent is charged with being unfit for duty by reason of intoxication due to alcohol consumption. The Court credits the testimony of [REDACTED] Police Officer Derose, who observed the Respondent at her home around 9:00 p.m. on March 4, 2007, and found her to have a strong breath odor of alcohol and slurring her words. Captain Papadopoulos and

Lieutenant Howley both noted on their fitness for duty reports (DX 2 and CX 1, respectively) that the Respondent displayed a “strong” odor of alcohol. Contrary to the Respondent’s contention, these supervisors did not simply parrot each other. Different boxes were checked on each of the forms to describe the Respondent’s appearance and demeanor. In light of these three separate observations by witnesses that testified in Court to the Respondent’s level of intoxication, the Court rejects the Respondent’s account in which she consumed only two glasses of wine hours before. Nor does the Court accept the assertion that those glasses of wine could not have made her unfit for duty. As such, the Court finds the Respondent Guilty of the second specification.

Specification No. 1

Notwithstanding the Court’s finding in Specification 2, there was no evidence, beyond the Respondent’s testimony, as to when she was drinking. The Respondent testified that she went to the home of a neighbor, Sinkusky, and could see the children from across the street. When Schule came home, they had an argument. The Respondent testified that she only had something to drink after, and as a result of, this fight. Notably, in neither of Joseph Cornetta’s statements did he report that Schule said that the Respondent was drinking. Further the evidence indicates that, once Schule returned, the children were being supervised by Schule. Thus, the Respondent’s unfitness did not necessarily mean that she failed to ensure that her children were supervised.

In the first specification, the Respondent is charged with failing to ensure that three children in her care – her 6- and 4-year old daughters Samantha and Danielle, and Colette, the

elementary-school-age daughter of her husband's cousin – were supervised while she was out of the house. The Court finds the Respondent Not Guilty.

There were two distinct periods in question when the Respondent was out of the house. The first was for approximately twenty minutes, while she went across the street in her [REDACTED] neighborhood to the home of Gary Sinkusky. The Respondent testified that she could see the girls from across the street, as she was standing inside the doorway of Sinkusky's house. She also stated that one of her daughters came outside twice and spoke to her during the 20-minute period.

The second period of time was when Schule came home. To put this second period of time in context, one must examine what occurred between the Respondent and Schule earlier in the day, before the Respondent went to Sinkusky's home. The Respondent testified that she had spoken to Schule about contributing more to the household. Schule seemed receptive, saying she was going to the store to buy a calendar so they could work out a schedule of her child-care responsibilities. But Schule was gone for perhaps two hours. When Schule returned, the Respondent called her and asked why she was gone so long. According to the Respondent, Schule accused her of leaving the children home alone. This was the argument, referred to supra, that caused the Respondent to become upset and drink wine, and then go to her friend Debbie's house.

The Respondent believed that the children were with Schule during this period of time. There is no evidence to contradict that belief, and from the evidence before the Court, it appears that the children were in fact with Schule during the period of time that followed the argument.

When the Respondent returned home from Debbie's house, she found Schule and the children missing. The Respondent called the police, leading to her arrest.

After the phone call with Schule, the Respondent was away from home for about two to three hours. The Advocate argued that in this time period, the Respondent failed to ensure that the children were supervised because she could not know, under the circumstances, that Schule would stay to watch them.

Schule could not be located by Department investigators and did not testify at this trial. The only witness who provided a first-person account of the events regarding the care of the children was the Respondent.

The Respondent testified that from Sinkusky's home, she could see the children from across the street. She was standing in Sinkusky's foyer, with the front door open and the glass-paned storm door closed. The street was a typical suburban two-way thru street, not an arterial road but with parking on both sides. There were front lawns but no sidewalks. The Respondent estimated the door-to-door distance as about ten feet longer than the length of the trial room. Twice, one of the girls came outside to speak to the Respondent, one time because they could not agree on what movie to watch and the second time to ask for popcorn. There is no testimony that the girls were anywhere other than inside the Respondent's home.

Additionally, while the account of the Respondent's husband, retired Detective Joseph Cornetta, is hearsay, his understanding of the "truth" was that Schule and the Respondent were in contact, and Samantha and the Respondent had spoken. Joseph Cornetta also added that the Cornettas' front door was "in direct view of where she was," across the street in Sinkusky's kitchen.

Thus, the evidence demonstrated, in essence, that the Respondent went to speak to a neighbor for 20 minutes while remaining in visual and verbal contact with the three children. This was insufficient to prove that the Respondent did not "ensur[e] that they were supervised."

Furthermore, the Respondent testified without contradiction that she was at Sinkusky's house for only 20 minutes before Schule came home, and did not have anything to drink until then. Joseph Cornetta's statements to the [REDACTED] police on the night of the incident (DX 1) and his official Department interview (RX A & A1) were both based on what Schule told him on the night of the incident. At no time did Joseph Cornetta state that he was told by Schule that she observed the Respondent drinking. Thus, any drinks the Respondent had that night are not relevant for this first time period.

For the second time period, the Advocate's argument was that the Respondent did not make sure that Schule was going to watch the children, and that Schule was not a good candidate to do so anyway. Nevertheless, the Respondent testified that the family's arrangement was that Schule was responsible for getting the children off to school in the morning because the Respondent had a 6x2 tour. The Respondent added that when Schule would leave the house and the Respondent or Joseph Cornetta was not there, Schule would take the children with her.

This contradicts the Advocate's contention that the Respondent, having just had an angry and upsetting conversation with Schule, failed to ensure the children were supervised because the Respondent could not count on her to take care of the children. Not only had Schule done so before, she did in fact take the children with her when she left after the angry phone conversation with the Respondent. Thus, Schule had a history of responsibly taking care of the children, something she apparently did in this case.

The Court rejects the Advocate's argument that Schule was an inappropriate person to mind the children. There is no evidence to support the assertion that Schule was not a responsible enough adult to baby-sit her daughter and cousins. She had custody of her own

daughter, Colette, and there is no evidence that child protective services were involved with Schule.

In sum, there is absolutely no evidence that the Respondent was drinking during the first period of twenty minutes, or that she could not watch the children from across the street. Furthermore, after that time period, the children were with Schule at all times. There is no evidence that Schule did not properly supervise the children. Thus, the children were being supervised at all times.

It can be said that in some circumstances, leaving a child at home “without ensuring that they were supervised” can be contrary to the good order, efficiency and discipline of the Department. In this case, however, there is no evidence to indicate that this occurred.

As has been noted, while the Respondent was intoxicated, there is no evidence that her drinking occurred while the children were in her care. Nor is there any evidence that the children were ever without adult supervision adequate to the situation. It is worth noting that there is no evidence before this Court of any adverse action taken against the Respondent by any child protective services agency, or that the Respondent ever lost physical custody of her two daughters.

As such, the Court finds the Respondent Not Guilty of the first specification.

Disciplinary Case No. 85356/09

Specification No. 1

The Respondent, having pleaded Guilty and testified in mitigation of the penalty, is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of becoming unfit for duty as a result of consuming alcoholic beverages. She has also been found Guilty of associating with a person, during a romantic relationship, whom she found out had a criminal record.

Taken in tandem, the Court recommends as a penalty that the Respondent forfeit the 30 days she has already served on suspension. See Case No. 78836/03, signed July 20, 2004 (nine-year member forfeited 15 vacation days and was ordered to attend alcohol counseling for being unfit for duty while off-duty and unarmed); Case No. 81791/06, signed June 20, 2007 (15 days for seventeen-year member with no record who allowed her nephew's father to live with her for a month after learning there was a warrant for his arrest).

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED
JUN 08 2010


RAYMOND W. KELLY
POLICE COMMISSIONER

From: Assistant Deputy Commissioner -- Trials

To: Police Commissioner

Subject: **CONFIDENTIAL MEMORANDUM
POLICE OFFICER KATHLEEN CORNETTA
TAX REGISTRY NO. 899512
DISCIPLINARY CASE NOS. 82733/07 & 85356/09**

In 2009, the Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on her annual performance evaluation. She was rated 4.0 "Extremely Competent" in 2008 and 2007. The Respondent has been awarded three medals for Excellent Police Duty.


David S. Weisel
Assistant Deputy Commissioner – Trials